

1 (Whereupon, a short recess was taken.)

2 JUDGE CHACHKIN: Let's go back on the record.

3 Is Hicks going to cross-examine?

4 MR. HALL: Yes, Your Honor.

5 JUDGE CHACHKIN: All right.

6 CROSS-EXAMINATION

7 BY MR. HALL:

8 Q Good afternoon, Mr. Sackley. We met before at  
9 your deposition. I am Doug Hall.

10 A Hi, Doug.

11 Q A few questions about the testimony you have given  
12 this morning and this afternoon.

13 Going back to a question that Mr. Shook asked you,  
14 the deal that led to the merger between Hicks Broadcasting  
15 and Airborne Group, when were negotiations started on that  
16 deal?

17 A Well, Dave and I first had contact in December of  
18 1992, and it was consummated the end of August, 1993.

19 Q I think you testified that it was you who  
20 contacted Mr. Hicks about that transaction. Is that right?

21 A That's correct.

22 Q You made the initial overture, if you will?

23 A Correct.

24 Q Before that time had you had much exposure to Mr.  
25 Hicks? What was the nature of your relationship with him at

1     that point?

2           A     I don't know that I ever even talked with him. I  
3     do recall about the time WRKR went on the air, maybe a month  
4     before, there was a local ad club that had monthly meetings.  
5     I recall that I was at one of those events. I think he may  
6     have even been sitting at the same table, you know, a big  
7     table with 12 people at it.

8           Prior to that, I don't think I really had much  
9     contact with him at all. It was just I picked up the phone  
10    and called him. You know, I had seen him. I had attended  
11    NAB meetings, so I had been aware of him at NAB.

12          Q     You basically traveled in the same business  
13    circles? Is that how you knew him?

14          A     No. I knew that he was the president and general  
15    manager of those radio stations. I had some employees who  
16    had worked for him, but really we had no social or business  
17    contact that I can think of prior to me calling him.

18          Q     Let me ask you about the shareholder agreement  
19    that ended up being drafted for the Crystal Radio Group.  
20    Was there anything in that agreement that prohibited one of  
21    the shareholders from acquiring another radio station?

22          A     No. Not the shareholder agreement, no.

23          Q     Let me ask you a few questions about your  
24    knowledge about Mr. Dille prior to September, 1993. I know  
25    you touched on this a little bit. Basically you had seen

1 him at NAB functions much like you had seen Mr. Hicks? Is  
2 that correct?

3 A Correct.

4 Q Any other chances to see him?

5 A (Non-verbal response.)

6 Q You have to answer audibly. I am sorry.

7 A No. I'm thinking while I'm moving my head.

8 Q Okay.

9 A No. I think my knowledge of Mr. Dille's existence  
10 was largely just industry, seeing his name in trade  
11 publications, seeing him at conventions. I knew he owned  
12 some stations in Grand Rapids, which was a nearby market.

13 Q Before what we have called the chance encounter in  
14 September, 1993, you had never seen Mr. Dille and Mr. Hicks  
15 together at any time?

16 A With specific recollection, no, but at the, you  
17 know, NAB meetings they were both in the upper echelon, so  
18 I'm sure they could have been sitting together on a stage or  
19 something like that.

20 Q But at that point did you even know that Mr. Hicks  
21 knew Mr. Dille any more than you knew Mr. Dille?

22 A I had no specific knowledge of the relationship,  
23 no.

24 Q Let's talk about the structure of the physical  
25 acquisition. I believe you testified previously that Mr.

1 Hicks got approximately 32 percent of the shares of Crystal  
2 Radio. Is that correct?

3 A Correct.

4 Q Is it not the case that you thought that was more  
5 than he should have gotten?

6 A Yes.

7 Q In fact, you thought he really should have gotten  
8 more like 25 percent of the Crystal stock?

9 A Correct.

10 Q I think you also testified that the for sale  
11 provision had come through Mr. Hicks' side of the merger.  
12 Is that correct?

13 A It was offered by Ric Brown, who in retrospect  
14 really was representing Dave in the transaction, yes. Even  
15 though we all had the same law firm, it was sort of parceled  
16 out. Yes.

17 Q Correct me if I am wrong, but I think you might  
18 have stated before that you had sort of a problem that sort  
19 of stuck in your craw with the for sale provision? It was  
20 not something that you would have liked to have had in the  
21 deal? It would not have been your preference? Is that  
22 right?

23 A It came from out of left field when it was  
24 offered, and it hadn't been discussed. It just sort of came  
25 out there.

1           You mentioned something about some Texas standoff  
2   or something. Ric called it a drop dead clause. You know,  
3   the mechanics of it were such that, you know, it certainly  
4   would seem fair to the people that had the option. My  
5   biggest concern was that was only two of the seven  
6   shareholders. What about all the rest of the people? Where  
7   are their rights in here?

8           Q     But ultimately agreed to by the Airborne  
9   shareholders as well?

10          A     That's correct. It was agreed to.

11          Q     Now, at some point down the road I think there  
12   came a time where the shareholders of Crystal, other than  
13   Mr. Hicks I guess, delayed the trigger date by which Mr.  
14   Hicks was entitled to exercise the for sale provision?

15          A     Well, that had actually been done previously.  
16   When the shareholder agreement was originally put together,  
17   the original draft just had that in there without a trigger  
18   date.

19                 In the days prior to closing, how many days I  
20   don't know, but a relatively short period of time, within a  
21   couple of weeks, the for sale provision had a date attached  
22   to it. Where originally it would have been effective with  
23   the merger, that date was changed to January 1, 1995, so as  
24   to postpone the availability of that provision.

25                 Then at a later date the shareholders did vote to

1 amend the shareholder agreement to postpone that effective  
2 date, and that was done actually I think several times.

3 Q Let me try to break that up into steps. The  
4 purpose of the for sale provision, as I think you have  
5 testified, was to allow one party to walk away or dissolve  
6 the relationship if there became an intractable issue  
7 between them?

8 A That was the way it was served up, yes.

9 Q Then in July of 1994 was when the Crystal board  
10 decided to remove Mr. Hicks from his employment and place  
11 him on leave without pay? Is that correct?

12 A Pursuant to recommendation of counsel, yes.

13 Q It was sometime after that that there were  
14 discussions about actually moving up the trigger date by  
15 which Mr. Hicks could exercise the for sale provision,  
16 correct?

17 A That scenario had been offered by Mr. Hicks'  
18 attorney, yes.

19 Q That did not happen? Instead, the converse  
20 happened? The trigger date was postponed even beyond  
21 January 1, 1995?

22 A After the lawsuit was filed, yes, or in close  
23 proximity to that date, yes.

24 Q That was in December, 1994, that the lawsuit was  
25 filed?

1           A     Correct.

2           Q     Ultimately was the for sale provision not  
3     eliminated altogether by the shareholders?

4           A     We did vote to eliminate the for sale provision,  
5     yes.

6           Q     You mentioned previously about the lawsuit that we  
7     have made some mention of. You mentioned that had been  
8     settled.

9                     Prior to the settling, was there a judicial  
10    decision adverse to the interest of you and the rest of the  
11    Crystal shareholders and board members concerning the for  
12    sale provision elimination?

13          A     Yes. There was a summary decision that was  
14    granted by the Judge in favor of the Plaintiff, and the  
15    Judge directed that the option of the for sale provision be  
16    made available to Mr. Hicks.

17          Q     I think you testified maybe in your conversation  
18    with Mr. Dille that you had told him that you were going to  
19    be relying on the FCC issues as a fence in the Crystal  
20    litigation to show that your actions were not oppressive.  
21    That must have been before the Judge came down with the  
22    ruling?

23          A     Let me think. The summary decision came in like  
24    August of 1996. I was on vacation with my son, so I  
25    remember when we got this on a phone call.

1           There were so many -- this was just one element of  
2   this case. There were multiple counts, and that was one  
3   thing. I mean, the case didn't end when that summary  
4   decision was rendered because actually the decision was not  
5   even entered. I don't think that decision was even entered  
6   until the following year.

7           It was again you get a bunch of lawyers in a room,  
8   and strange things happen. This was a decision the Judge  
9   had rendered. However, it did not get entered at that time.

10          Q    You agree that it was an adverse decision for your  
11   side of the case?

12          A    Yes, but certainly it was not a final decision by  
13   any means.

14          Q    That Judge found that the actions of the Crystal  
15   shareholders were willfully unfair and oppressive?

16          A    Yes, he did. Yes, he did.

17          Q    And that was specifically in reference to the  
18   elimination of the for sale provision?

19          A    We disagreed with it and planned to appeal, but we  
20   didn't need to because we settled.

21          Q    But that is what the Judge found?

22          A    Yes. That's correct.

23          Q    I believe you testified in the past that you have  
24   described the litigation with Mr. Hicks involving Crystal as  
25   extremely expensive and very draining emotionally. Is that



1     how you would characterize it today?

2           A     On my side, absolutely.

3           Q     You had other disputes with Mr. Hicks as well?  
4     You believe he was, I guess, insubordinate, for lack of a  
5     better word, regarding Mr. Miholer, the discussion you  
6     talked about this morning?

7           A     That wasn't part of the lawsuit.

8           Q     No. I am saying you had disputes with Mr. Hicks  
9     along the way?

10          A     I'm sure we had disputes with each other in that  
11     regard.

12          Q     In response to one of Mr. Johnson's questions, I  
13     believe, I think you suggested that you really do not have a  
14     personal agenda to be served by testifying here with respect  
15     to the outcome of this proceeding. Do you remember  
16     testifying to that?

17          A     Yes, I do.

18          Q     Is it not true that currently yourself and several  
19     other Crystal shareholders and/or board members have  
20     litigation pending against Mr. Brown's firm for malpractice?

21          A     That's correct.

22          Q     Is it not also true that among the allegations in  
23     that suit are allegations concerning the WRBR issue?

24          A     That's correct.

25          Q     And specifically the allegation that Ric Brown and

1 his firm knew or should have known that there were FCC  
2 problems with the WRBR transaction?

3 A That's correct.

4 Q Is it not fair to say, Mr. Sackley, that there  
5 would be benefit to the outcome of your case if the FCC  
6 should decide against Mr. Hicks and find there was an FCC  
7 violation in this matter?

8 A I have no idea.

9 Q Would you agree that this proceeding and its  
10 outcome has some bearing on your litigation with Mr. Brown  
11 and his firm?

12 A Unless you define bearing, I don't know as an  
13 independent --

- 14 Q Well, sir, your allegations are that Mr. Brown and  
15 his firm should have known that there were FCC violations.  
16 Would it not help if there were found by the FCC to be  
17 violations?

18 A Frankly, at this point I don't know because in the  
19 Circuit Court proceeding that we have with Mr. Hicks the  
20 Judge that rendered the decision that you referred to  
21 previously said -- part of his comments was he was rendering  
22 the decision because the actions we had taken with respect  
23 to Mr. Hicks' employment and eliminating the for sale  
24 provision were based on speculation that was not borne out  
25 by reality.

1 represented us in the Hicks litigation.

2 Q Approximately how much was that?

3 A About a quarter of a million dollars.

4 Q What else are you seeking in that suit?

5 A As any good malpractice attorney -- by the way,  
6 there's not too many guys who want to sue people like you.  
7 That's hard to find. Not like you, but very few attorneys  
8 want to get involved in malpractice. It's like the internal  
9 affairs guy at the police station.

10 He's working on contingency, so you have to throw  
11 everything out there. He's thrown all kinds of things in  
12 there that you can argue or not argue. Damages I'll tell  
13 you, even though I guess settlement discussions are not part  
14 of the record.

15 When they asked to settle this thing, we told them  
16 what our settlement price was, and we presented them with  
17 copies of the invoices from the law firms. We said this is  
18 what we want. We want to be made whole in this, and that's  
19 all we wanted.

20 Q It is also true that you and the other Plaintiffs  
21 in that suit are seeking reimbursement for all the money  
22 that you had paid to Dave Hicks as part of the settlement of  
23 the Crystal litigation. Is that not right?

24 A He threw everything in there.

25 Q It asks for \$2 million?

1           What he said was if we say that there are FCC  
2 problems with what Mr. Hicks has done, the FCC apparently  
3 doesn't see any problems with what he's done. Therefore,  
4 the Judge didn't see any, and he made his ruling.

5           When Mr. Guzman asked about this and what my  
6 feelings were about this proceeding, I said if there's any  
7 -- I believe he said this in that context. If there's any  
8 way I could come away with some vindication that even just  
9 the notice of hearing at least is enough to say that, you  
10 know, the Commission staff felt that there was enough going  
11 on here to at least warrant an inquiry here, where the Judge  
12 that we had in our case didn't take one word of testimony  
13 from any of the principals.

14           This was all argued by attorneys in preliminary  
15 hearings, so --

16           Q     I understand that you might be personally  
17 vindicated, but I am focusing more on I guess more of the  
18 tangible benefits that could result to you and your friends  
19 and family members that made up the Crystal board and  
20 shareholders.

21           Are you familiar enough with the lawsuit to tell  
22 me what some of the damages are that you are seeking against  
23 Mr. Brown and his firm?

24           A     We had asked him for the amount of the attorney  
25 charges that we had paid his firm and the firm that

1           A     That's right. Sure.

2           Q     Damages associated with the loss of the  
3 opportunity for Crystal Radio to purchase the transaction,  
4 too, right?

5           A     That's correct.

6           Q     Who is Mr. Blaske? Robert Blaske.

7           A     He's the attorney that's filed the malpractice  
8 suit.

9           Q     Do you know who Grant Gruel is?

10          A     He's the attorney representing Miller, Canfield,  
11 Paddock & Stone, which is Ric Brown's firm.

12          Q     Do you know if he has attempted to use the  
13 pendency of this FCC proceeding in any way to negotiate a  
14 settlement with Mr. Brown and his attorney?

15          A     I have never had a conversation with Mr. Gruel.  
16 Mr. Blaske has. I know that Mr. Blaske -- excuse me; that  
17 Mr. Gruel has been actively pursuing settlement discussions  
18 over the past couple of weeks.

19                I don't think it's any coincidence that the timing  
20 had something to do with this proceeding, in my opinion,  
21 although I don't know that directly.

22                MR. HALL: I would like to show you a document.

23                This is actually a Hicks Broadcasting document,  
24 Your Honor. Copies of this have been served on all the  
25 parties as well. We have two sets here.

1 JUDGE CHACHKIN: What number is it?

2 MR. HALL: 59, Your Honor.

3 BY MR. HALL:

4 Q Mr. Sackley, if you could take a moment to look at  
5 Document No. 59?

6 A Okay.

7 Q Have you had a chance to review it?

8 A Yes.

9 Q Can you identify this document for me?

10 A It's a letter from Bob Blaske to Grant Gruel and  
11 Sharon Woods. I don't know who Sharon Woods is.

12 Q Are you shown as a cc on this letter?

13 A Pardon me?

14 Q Are you shown as receiving a copy of this letter?

15 A Yes.

16 Q Do you recall receiving a copy of this letter?

17 A Yes.

18 Q Can you read the paragraph? It is a short letter.  
19 Can you read the long paragraph, please?

20 A I see it.

21 Q Read it out loud.

22 A Read it out loud? Okay.

23 MS. SCHMELTZER: It is already in the document.

24 JUDGE CHACHKIN: Well, it is not in the record at  
25 this time.

1           THE WITNESS: "Enclosed herewith, please find a  
2     copy of the Order to Show Cause, Hearing Designation Order  
3     and Notice of Opportunity for Hearing issued by the Federal  
4     Communications Commission. I understand the hearing is  
5     going to be the first part of October. I think the FCC  
6     matter has some bearing on our case. Would your clients  
7     like to reconsider their settlement position?"

8           BY MR. HALL:

9           Q     Did you discuss this document with Mr. Blaske  
10    before or after he sent it?

11          A     Yes. Actually, I asked Mr. Blaske after waiting  
12    all these months to send a copy of the Hearing Designation  
13    Order to -- actually, I told him to send it to Miller  
14    Canfield.

15          Q     So you thought yourself that you could use the  
16    pendency of this FCC proceeding as a way to try to get a  
17    better settlement of the Miller Canfield litigation? Is  
18    that fair?

19          A     Sure. Yes.

20          Q     Turning to a different subject, Mr. Sackley, I  
21    believe it was your testimony that it was in January of  
22    1994, at least by that point, that you began to think that  
23    there were FCC problems with the deal with Mr. Dille and Mr.  
24    Hicks were contemplating?

25          A     Certainly at that time, yes.

1           Q     At that point you did not go to the FCC with your  
2 concerns?

3           A     No.

4           Q     In March of 1994 when you learned that the deal  
5 had closed, did you go to the FCC at that point?

6           A     No.

7           Q     In July of 1994 after you received the letter from  
8 Mr. Emmons and thereafter terminated Mr. Hicks, did you go  
9 to the FCC?

10          A     I will stipulate that I didn't go to the FCC with  
11 this at any time.

12          Q     You did not go to them in December, 1994, or  
13 September, 1995, after you talked to Mr. Dille? At no point  
14 in time?

15          A     At no time.

16          Q     You were willing to use the pendency or the threat  
17 of the FCC violations coming out in the Crystal litigation  
18 against Mr. Dille in an effort to try to help him bring Mr.  
19 Hicks to the table when you met with him in September of  
20 1995?

21          A     Correct.

22               MR. HALL: Can I have a moment, Your Honor, to  
23 review my notes?

24               JUDGE CHACHKIN: Yes.

25               (Pause.)



1 MR. HALL: I have nothing further, Your Honor.

2 Thank you, Mr. Sackley.

3 JUDGE CHACHKIN: All right. Mr. Crispin, do you  
4 have any questions?

5 MR. CRISPIN: Just one.

6 CROSS-EXAMINATION

7 BY MR. CRISPIN:

8 Q Mr. Sackley, you testified in response to  
9 questions from Mr. Shook about a relationship you had with a  
10 Mr. Nat Emmons. Do you remember that?

11 A Correct.

12 Q I was not clear from your testimony this morning  
13 as to whether or not those communications -- strike that.  
14 Did you have communications with Mr. Emmons? You  
15 personally?

16 A Yes. By telephone, yes.

17 Q Now, did you have written communications with Mr.  
18 Emmons?

19 A Mr. Emmons sent me I think a couple of letters and  
20 obviously bills. If anything, I would have provided stuff  
21 to Mr. Emmons; documents I'm sure. I could have given him  
22 some narrative about the situation. It's possible.

23 Q That is where you left me this morning, and that  
24 is the only point I want to clear up. Just a question or  
25 two.

1           Were your dealings with Mr. Emmons oral, or did  
2   they include writing? When I say writing, I mean writings  
3   that you prepared.

4           A     I don't recall. I know it was a -- the stuff we  
5   were talking about was FCC record stuff, the applications --

6           Q     Correct.

7           A     -- and supporting materials. I know that I sent  
8   him copies of these same minutes and agendas that we are  
9   talking about here today, and I sent him copies or sent him  
10   a copy of a May, 1994, memo that I had given to Dave. Those  
11   are the only things I specifically recall sending.

12           Now, whether I put a post-it note on it, but in  
13   terms of long, drawn out stuff or fashioning a letter or  
14   something, I don't have any recollection of that.

15           Q     Let me put it to you this way, Mr. Sackley. Did  
16   you at any time with Mr. Emmons prepare in narrative form  
17   any record of conversations with Mr. Hicks, Mr. Dille, Mr.  
18   Brown, Mr. Cook, any of those individuals?

19           A     Just what I said earlier. I may have done that.  
20   It would be my normal course if I was doing something to put  
21   those kinds of things in place.

22           I don't have any specific recollection of doing  
23   that, but that would not be unusual. I know I did do that  
24   in the civil case with the attorney that was handling that.

25           Q     My last question is this. Did you produce any

1     such writings in the course of this case? In other words,  
2     have you made available to the Mass Media Bureau or any of  
3     the parties in this case any written narrative prepared by  
4     you for Mr. Emmons?

5             A     I don't have any specific recollection because --  
6     actually, I provided nothing to the FCC. I've been asked  
7     for -- I was asked for some telephone bills today that they  
8     asked me to bring along. I provided nothing to the FCC. I  
9     assume they have all the stuff in their file.

10            MR. CRISPIN: I have no further questions, Your  
11     Honor.

12            JUDGE CHACHKIN: Any redirect?

13            MR. SHOOK: No, Your Honor, it is not in the  
14     nature of redirect, but I do have a point to make relative  
15     to the confidential agenda which I neglected to make this  
16     morning.

17            I understand Your Honor made a ruling on that, but  
18     at the time I did not make reference to Rule 8036 of the  
19     Federal Rules of Evidence, which refers to an exception to  
20     the hearsay rule.

21            I believe that the confidential agenda would be  
22     covered under that rule, so we would not want any  
23     limitations placed on our use of that material, which I  
24     believe exists right now.

25            JUDGE CHACHKIN: You do not consider it a record

1 of regularly conducted activity. This was an agenda item  
2 made for a specific purpose because there was a dispute.  
3 Mr. Hicks and this witness were having some difficulties,  
4 problems, and he prepared an agenda. In fact, I think it  
5 was a first agenda.

6 MR. SHOOK: Correct, Your Honor. This was --

7 JUDGE CHACHKIN: I do not see how this constitutes  
8 what one would consider to be a regular conducted activity,  
9 a record of a regularly conducted activity.

10 MR. SHOOK: It was regularly conducted from the  
11 standpoint that agendas were prepared prior to each board  
12 meeting. That is the testimony that came out.

13 JUDGE CHACHKIN: As far as that is concerned, I am  
14 not precluding you from using the agenda item. I just said  
15 we are not going to receive it for the truth of the matter.

16 The witness is here to testify, and he can testify  
17 about what matters he discussed with Mr. Hicks, what matters  
18 were discussed at the meeting. What is contained therein is  
19 no different than anything he said in his affidavit. You  
20 cannot use a prior acquired statement.

21 MR. SHOOK: Your Honor, we just wanted to bring  
22 this up and --

23 JUDGE CHACHKIN: But this is not the same as, for  
24 instance, a police report made by presumably an objective  
25 person taking down notes in a police report. This is an

1 individual carrying an agenda item. I do not see how it  
2 fits under this rule. I am not going to change my ruling.

3 Anything else?

4 MR. SHOOK: Nothing, Your Honor.

5 JUDGE CHACHKIN: You are excused. Thank you very  
6 much.

7 THE WITNESS: I can go home?

8 JUDGE CHACHKIN: You can go home.

9 THE WITNESS: All right.

10 (Witness excused.)

11 JUDGE CHACHKIN: Do you have your next witness  
12 here?

13 MR. SHOOK: Is Mr. Kline here?

14 MR. GUZMAN: You know, Jim, I had understood that  
15 you were going to go all day with Mr. Sackley. Mr. Kline is  
16 not here. I can try and reach him if you would like.

17 JUDGE CHACHKIN: Well, that does not make any  
18 sense. We will just start at 9:00 a.m. with Mr. Kline.

19 (Whereupon, at 3:50 p.m. the hearing was  
20 adjourned, to reconvene at 9:00 a.m. on Wednesday,  
21 October 21, 1998.)

22 //

23 //

24 //

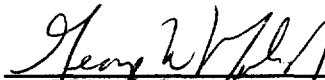
25 //

**REPORTER'S CERTIFICATE**

**FCC DOCKET NO.:** 98-66  
**CASE TITLE:** In Re: Hicks Broadcasting  
**HEARING DATE:** October 20, 1998  
**LOCATION:** Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

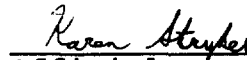
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Official Reporter  
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

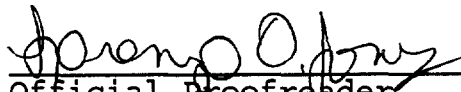
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

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